



Department of the Treasury  
Internal Revenue Service  
**Tax Exempt and Government Entities Division**  
1100 Commerce Street MC 4900 DAL  
Dallas, TX 75242

Release Number: **201517015**  
Release Date: 4/24/2015  
ORG  
UIL Code: 501.03-00

Date:  
November 25, 2013  
Taxpayer Identification Number:

Form:  
990  
Tax year(s) ended:  
12/31/20XX& 12/31/20XX  
Person to contact / ID number:

Contact numbers:  
Phone Number:  
Fax Number:  
Manager's name / ID number:

Manager's contact number:  
Phone Number:  
Response due date:  
December 26, 2013

### **Certified Mail - Return Receipt Requested**

Dear :

#### **Why you are receiving this letter**

We propose to revoke your status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

#### **What you need to do if you agree**

If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(3).

After we issue the final revocation letter, we'll announce that your organization is no longer eligible for contributions deductible under section 170 of the Code.

#### **If we don't hear from you**

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

#### **Effect of revocation status**

If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

#### **What you need to do if you disagree with the proposed revocation**

If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also may file a protest with the



IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter. The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

**Contacting the Taxpayer Advocate Office is a taxpayer right**

You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service  
Office of the Taxpayer Advocate

**For additional information**

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing  
Director, EO Examinations

Enclosures:  
Report of Examination  
Form 6018  
Publication 892  
Publication 3498



Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATIONS OF ITEMS</b>	Form number or exhibit <b>990</b>
Name of taxpayer <b>ORG</b>	Tax Identification Number	Years/Periods ended <b>12/31/20XX</b> <b>12/31/20XX</b>

LEGEND

ORG - Organization name      XX - Date      address - Address      city - City      state  
 - State      secretary - Secretary      individual-1 to 9 - Individual-1 to 9  
 student-1 to 26 - Student-1 to 26      CO-1 to 5 - CO-1 to 5

**ISSUES**

(1) Does ORG, a nonprofit organization, that operates booths at public parks and recreation areas that sell t-shirts in the manner described below qualify for exemption under *section 501(c)(3) of the Internal Revenue Code (IRC)*?

(2) Does ORG's records keeping practices constitute a part of its net earnings inures to its Secretary,      Secretary, that violates requirements described in *IRC section 501(c)(3)*?

**FACTS**

ORG was formed as a nonprofit public benefit corporation in State. According to its Articles of Incorporation dated March 3, 20XX, the purposes of ORG are:

*To educate the public about the importance of preserving our natural environment, maintaining our cultural values and protecting our social fabric through such means as establishing environmental education stations, conducting nature clean-up programs, and distributing fliers, pamphlet and message-bearing items (such as T-shirts).*

It filed Form 1023, *Application for Recognition of Exemption under Internal Revenue Code under Section 501(c)(3) of the Internal Revenue Code*, on September 17, 20XX. It was granted the exemption status on April 22, 20XX. On Part II of the Form, ORG provided its activities and operational information:

*To accomplish its exempt-purpose goals, our organization will engage in the following activities:*

- *Maintain environmental education stations in public places, at which members of the public are informed about crucial environmental issues facing all of us, and are provided with a range of actions they can take (such as recycling, etc.) to help improve the situation*
- *This will include the free distribution of educational fliers and pamphlets on environmental issues [0%]*
- *Conduct environmental clean-up programs in our local area, manned by volunteers from the community [0%]*
- *Engage in other activities, from time to time, to educate the public on important environmental concerns [0%]*

Report issued on November 25, 20XX



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*We will be distributing printed materials and message-bearing items such as T-shirts. However, our activities will be clearly distinguished from those of a commercial enterprise because:*

- *All published materials will be educational in nature, clearly supporting our organization's goals, and will be distributed free of charge, and*
- *Sales of message-bearing items (such as T-shirts) will clearly support our educational goals as well, since these items will carry prominently displayed messages regarding the environment*

ORG filed Form 990, *Return of Organization Exempt From Income Tax*, for the year ended December 31, 20XX, on November 14, 20XX. The Form 990 shows the following:

**Part I Revenue, Expenses, and Changes in Net Assets or Fund Balances**

*Income*

Gross sales of inventory, less returns and allowances	\$	0
Less: cost of goods sold	\$	0
Total revenue	\$	0

*Expenses*

Total Expenses	\$	0
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Excess for the year	\$	0
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Net assets or fund balances at end of year	\$	0
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**Part II Balance Sheets**

	Beginning of year	End of year
Cash, savings, and investments	\$ 0	\$ 0
Net assets or fund balances at end of year	\$ 0	\$ 0

ORG filed Form 990, *Return of Organization Exempt From Income Tax*, for the year ended December 31, 20XX, on August 15, 20XX. The Form 990 shows the following:

**Part I Revenue, Expenses, and Changes in Net Assets or Fund Balances**

*Income*

Gross sales of inventory, less returns and allowances	\$	0
Less: cost of goods sold	\$	0
Total revenue	\$	0

*Expenses*

Total Expenses	\$	0
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Excess for the year	\$	0
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Net assets or fund balances at end of year \$ 0

## Part II Balance Sheets

	Beginning of year	End of year
Cash, savings, and investments	\$ 0	\$ 0
Net assets or fund balances at end of year	\$ 0	\$ 0

The examiner (referred to as examiner in the chronological summary) began the examination on February 7, 20XX. Following is a chronological summary of completed actions throughout this examination process:

- 2/7/XX Examiner sent ORG Letter 3611 and its attachments to the address listed on Form 990 to schedule an audit on March 6, 20XX at 10 A.M at Address, City, State Zip Code.
- 2/20/XX Examiner called ORG 's phone number listed on Form 990 and spoke to Secretary, Secretary of ORG. Examiner informed her that ORG had been selected for examination. ORG Secretary said she got flu and had not picked up mails for a while. She needed to pick up mails before she could discuss further.
- 2/25/XX Examiner spoke to ORG Secretary and explained to her audit process. ORG was not able to get documents ready by March 6, 20XX. The appointment was rescheduled to April 2, 20XX. ORG did not have office in a public place and was not willing to hire a representative. Examiner told Secretary a meeting room for examination can be arranged in IRS office
- 3/1/XX Examiner sent ORG Letter 3613 and its attachments to the address listed on the Form 990, to schedule an audit on April 2, 20XX at 10 A.M in IRS office located at Address, City.
- 3/20/XX Secretary called examiner to reschedule the appointment again because the accountant of ORG was not available in April. Secretary could not provide a specific date for the appointment. Secretary stated that she would call examiner soon to provide her availability.
- 3/22/XX Examiner left a voice message at to ORG that another appointment needs to be set up if the previous appointment on April 2, 20XX was not able to keep.
- 4/2/XX Examiner wrote to the organization to schedule another appointment for the audit of the above tax period on May 1, 20XX in IRS office at Address, City, State Zip Code after the organization was not able to keep the previous appointments scheduled on March 6, 20XX and April 2, 20XX.

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- 4/8/XX Secretary left a voice message to examiner's voice message system and requested the appointment rescheduled to May 23, 20XX, at 11A.M. at a residential house address at Address, City, State Zip Code. Examiner left a voice message at ORG's phone number to explain that the audit is to be at a public place. Examiner requested ORG return call to discuss the location of audit.
- 4/10/XX ORG did not respond to the voice message. Examiner mailed a letter to ORG for a meeting on May 23, 20XX in IRS office in City.
- 5/20/XX Examiner received a Form 2848, *Power of Attorney and Declaration of Representative*, from Attorney. Attorney requested the meeting to be held in his office since he had ORG books and records in his office. Attorney agreed examiner going to his office on May 22 and May 23, 20XX because May 24 would be a furlough day for examiner.
- 5/22/XX Attorney presented two boxes of records that ORG brought in few days ago. He told examiner that he did not have a chance to go over the records, so he could not answer examiner's any question. Examiner reviewed the records in the boxes, which include:
- Determination letter received from the IRS dated April 22, 20XX granting exemption from Federal income tax
  - Articles of Incorporation
  - By-laws adopted on July 1, 20XX
  - Minutes for Board meeting on February 15, 20XX
  - Minutes for Board meeting on March 3, 20XX
  - Minutes for Board meeting on February 1, 20XX
  - Business Insurance Invoices from
  - Auto Insurance Invoices from
  - A double-sided pamphlet about ORG, "Stop Global Warming" and "Environmental Awareness"
  - A double-sided pamphlet about ORG, "50 Ways to help our Planet"
  - Summary of Merchant Service Fees for 20XX
  - Receipts for gas expenses in 20XX
  - Receipts for office expenses and supplies in 20XX
  - Receipts for auto maintenance and repair
  - Quarterly Electronic Filing of Sales and Use Tax to Board of Equalization, State in 20XX
  - Acknowledgement or thank you letters from other public charities for donations received
  - Monthly Bank Statements at (Account Number 00) for year 20XX
  - Monthly Journals (12 sheets) with Revenue and Expenses transactions for year 20XX

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The summary of deposits, withdrawals, and checks paid on bank statements and the debit, credit, and cash transactions recorded on the monthly journals are listed in the following:

	Bank Statements				Monthly Journals (General Ledger)			
20XX	Deposits	Withdrawals & Debit	Checks Paid	Balance	Debit <sup>1</sup>	Credit <sup>2</sup>	Cash Expenses <sup>3</sup>	Street Sales Cash Not Deposited <sup>4</sup>
Beginning Balance				0.00				
January	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
February	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
March	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
April	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
May	0.00	0.00	0.00	0.00	0.00		0.00	0.00
June	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
July	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
August	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
September	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
October	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
November	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
December	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total	0.00	0.00	0.00		0.00	0.00	0.00	0.00
Ending Balance				0.00				

<sup>1</sup> Checks paid plus withdrawals & debit on bank statements (\$0) almost equal to the debit on monthly journals.

<sup>2</sup> The variance between deposits and credit was caused by the discrepancies in October and December.

<sup>3</sup> ORG kept receipts of gas expenses and a portion of office expenses paid by cash. The records of vehicles usage or mileage logs were not maintained.

<sup>4</sup> ORG did not provide records or information how to track of the cash received or disbursed.

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The distribution of expenses of each month in 20XX is in the table below:

20XX01 / 20XX12	Permit & sales tax	Business insurance bank, credit card service fees	Art work, special list heat press equipment, domain name & ads	Gas, auto insurance, repair, maintenance & tickets	Office expense, supplies & boxes	Clothing & cash withdrawal	Donations & publications purchased
January	0.00	0.00		0.00	0.00		0.00
February	0.00			0.00	0.00		0.00
March	0.00	0.00	0.00	0.00	0.00		0.00
April	0.00			0.00			
May	0.00	0.00	0.00	0.00			0.00
June	0.00		0.00	0.00	0.00	0.00	0.00
July	0.00	0.00		0.00	0.00		0.00
August	0.00	0.00	0.00	0.00	0.00		0.00
September	0.00	0.00	0.00	0.00			0.00
October	0.00	0.00		0.00	0.00		0.00
November	0.00	0.00	0.00	0.00			0.00
December		0.00	0.00	0.00		0.00	0.00
Totals	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Percentage	0%	0%	0%	0%	0%	0%	0%

\* \$0 out of \$0 donations was paid to City Zoo/Zoological Society in 20XX. The cancelled checks of 20XX indicated that substantial amount of payments made to City Zoo was not donations, but rental fees of a space for ORG's sales booth

5/23/XX Examiner conducted interview with Secretary over the phone because Attorney was not able to answer examiner's questions as to operations, books and records of ORG. Secretary stated that the figures reported on Form 990 were estimates because she rushed to file the return to avoid it past due. Examiner asked Secretary if a tour can be arranged for the location where ORG sells and stores t-shirts. Secretary responded that it would not be convenient because the inventory is stored in her residence and the sales booths are not at fixed locations. She would provide photos to illustrate ORG's exempt activities. Secretary stated that she usually maintains cash around \$0 on hands for inventory purchase and other expense. T-shirts inventory purchased (cost of goods sold) was not indicated on bank statements or monthly journals. No records are maintained to keep track of daily sales, balance of inventory, and petty cash, except the original receipts for gas and some office expenses. Examiner provided Memorandum of Interview and information document request (IDR2) to clarify information provided and specify items that still remained outstanding. The IDR was given to Attorney to be forwarded to ORG.

5/31/XX Examiner called Attorney and left a voice message to Attorney whether ORG has any questions as to IDR2.

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6/XX/XX Examiner call Attorney to follow up IDR2 and was told by his office assistant that Attorney was on vacation and not available until June 26, 20XX. Examiner left a voice message to Secretary that examiner had not received document in response to IDR2 from ORG or Attorney.

6/18/XX Examiner left another voice message to Secretary.

6/20/XX Examiner mailed a letter to ORG, copy to Attorney, advised ORG provide documents requested by July 8, 20XX, keep examiner informed of unavoidable delays and discuss any potential issues. Secretary called examiner after examiner mailed out the letter. She stated that Attorney did not forward IDR2 to her after the field exam on May 23, 20XX. Examiner replied to her that a letter with a copy of IDR2 have been sent to her. She told examiner that she would try to provide the requested items as requested.

6/26/XX Examiner received PS Form 3811 for the letter mailed on June 20, 20XX. It indicated that the letter was delivered to ORG Secretary on June 22, 20XX.

7/10/XX Considering information provided for 20XX was insufficient to determine ORG's exempt status, examiner mailed another letter and IDR3 by certified mail to ORG, copy to Attorney, to expand the examination to the subsequent year (20XX) and schedule a meeting in person on August XX, 20XX.

Secretary called examiner after the letter and IDR3 were mailed. Examiner informed her that examination had been expanded to 20XX. Examiner explained to her in addition to non response of ORG and Attorney, examiner did not have enough information or supporting documents from ORG to conclude the examination for 20XX. Secretary engaged her friend, who has working experiences with IRS, in the phone conversation. Her friend questioned examiner the reason of expending audit to 20XX, and what is examiner targeting at? Examiner repeated that information or supporting documents were insufficient to make a determination. Her friend responded: "Is selling t-shirts bearing environmental protection message not enough?" Examiner replied more information and supporting documents are needed to determine whether or not selling t-shirts is not profit oriented. Her friend replied, "I had known her for a long time, she is nice and kind to people around. IRS picked the wrong one to go after. Some transactions might be a problem, but overall her organization has been doing a good job helping people and society." Examiner asked what transactions she referred to could be a problem? Her friend did not respond. Secretary said she would send all the items requested on IDR2 to examiner this week.

7/12/XX Examiner received a box from ORG, which contained the following items:

- A letter dated on July 10, 20XX written by Secretary to IRS
- Hand writing response to Item 2a and 2g on IDR3
- Ten t-shirts, art-work of environmental messages, and stickers from ORG - the messages ORG printed on t-shirts for sale (see Exhibit #1). The

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messages are: Slogan-1, Slogan-2, Slogan-3, Slogan-4, Slogan-5, Slogan-6, and Slogan-7

Examiner called ORG and left a voice message to confirm the receipt of these items.

7/15/XX Examiner received photos (see Exhibit #2) from ORG with a letter dated July 11, 20XX written by Secretary to show ORG's booths display. Several photos indicated that color t-shirts are sold for \$0 a piece and tie dye t-shirts \$0 a piece. Examiner called Attorney and Secretary to confirm receipt of these photos. Examiner asked her whether she has questions about the letter and IDR3 sent on July 10, 20XX. She stated that she has not received it yet and Attorney did not get a chance to respond to her message. She asked examiner what would be the worst scenario of the examination. Examiner replied the purpose of F990 examination is to determine if ORG conducts activities to fulfill its exempt purpose and whether there is tax consequence for transactions under examination. Examiner explained to Secretary that a meeting in person is necessary to clarify information provided. Examiner advised Secretary pick up the letter and IDR3 and sit down with Attorney for meeting with examiner. The meeting was scheduled on August XX, 20XX.

7/27/XX Attorney left a voice message to examiner on Saturday, July 27, 20XX at 5 pm.

8/2/XX Examiner returned call to Attorney. His office assistant told examiner that Attorney was on vacation and returning to office on August 5, 20XX.

8/5/XX Examiner called Attorney office again. Examiner was told Attorney was in meeting with clients. Examiner left a voice message to Attorney for return call.

8/6/XX Examiner called Secretary to confirm the meeting on **August XX**, 20XX in IRS City office as well as to review books and records of ORG in 20XX provided on that date.

8/12/XX Attorney called examiner and requested meeting to be held in his office. Examiner told him that records requested for 20XX exam might be voluminous, examiner plans a two days audit in City to review records and obtain copies of document if necessary. Examiner would not have problem to change location if Attorney can provide such accommodation. Examiner called ORG Secretary and informed her that the location of field examination changed to Attorney office per their request.

8/XX/XX Examiner interviewed Secretary with Attorney at presence. Secretary provided hand written response on IDR3 and additional five t-shirts (see Exhibit #3) to demonstrate some other messages and designs on ORG's t-shirts. The messages are: Slogan-8, Slogan-9, Slogan-10, and Slogan-11.  
Secretary did not provide any documentation of 20XX for examination because she wanted an end of this examination. Examiner explained to her the purpose of examination again and if ORG is not willing to provide requested documents for examination, examiner would have to seek another way to review its books and records,

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such issuance of summons. Attorney replied that ORG should be able to obtain bank statements of 20XX and provide records as requested. Secretary told examiner she would be on trip to City from August 24 through to September 8. She would not be able to provide such records. Examiner explained to them that the examination started in February 20XX, sufficient time had been given to ORG. Secretary does not need to be present for books and records to be provided. Attorney can forward the records to examiner by mail or examiner can schedule another trip to Attorney office if records are too voluminous. Additional two week was granted to ORG to assemble books and records of 20XX for examination.

8/14/XX Examiner mailed Memo for interview and IDR4 to ORG and Attorney. IDR4 was issued to request comments and corrections for the information provided on **August XX, 20XX**, books and records of 20XX, and the items remain outstanding in IDR3.

8/30/XX Examiner called Attorney to confirm receipt of a package from ORG, but some requested items were apparently not provided, such as 20XX Monthly Journals (General Ledger) and bank statements of March, April, and July 20XX. Attorney told examiner that Secretary was out of country. The package contained the following items:

- A letter dated on August 27, 20XX written by Secretary to IRS
- A letter dated on July 8, 20XX written by City Attorney-1, Deputy City Attorney of City, to Individual-1
- A report dated on June 5, 20XX written City Attorney-2, City Attorney of City (Attachment A to the above letter dated on July 8, 20XX)
- A memorandum of law dated November 14, 19XX, from City Attorney-3, City Attorney of City, to Councilmember Council Member (Attachment B to the above letter dated on July 8, 20XX)
- A photo showing a man carrying a sign demonstrating "LABEL GMOs"
- A photo showing a female carrying signs (words on signs are not readable)
- A photo showing two females and a boy standing behind a table with a sign of "LABEL GENETICALLY ENGINEERED FOOD"
- A photo showing the three signs of placed on sales table of ORG:
- A photo showing a female (with a girl) carrying a trash grabber and trash bag on beach
- A photo showing a plastic bucket with some bottles inside
- A photo showing some publications in two cases
- A photo showing two female standing in front of a table with books
- Six photos showing t-shirts displayed on a table
- An USB Flash Drives contains the following electronic files:
  - Two photos in an electronic file named "activities\_April20XX", showing ORG's posters placed on the ground
  - Five photos in an electronic file named "activities\_August20XX" showing a representative of ORG tending sales table

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- Two photos in an electronic file named "activities\_August20XX" showing publications from other charities in boxes
- Three photos in an electronic file named "activities\_February20XX" showing publications from other charities displayed on a table
- An electronic format of the letter, file named "Attorney Letter Non Profit Court Case", dated on July 8, 20XX written by City Attorney-1, Deputy City Attorney of City, to Individual-1 and two attachments
- Three photos in an electronic file named "City Food for Life" showing a female preparing and delivering food for a crowd of people (looked like somewhere in Country)
- An electronic pamphlet file named "ORG\_Trifold\_FullColor", that ORG published during examination
- An electronic format of gas receipts file named, "Gas Receipts 20XX – Part 1" and "Gas Receipts 20XX – Part 2"
- An purchase order, file named "Store\_2-10-20XX" (Order #50, dated February 10, 20XX) to Store:

Shipment	Products	Price	Total
1		\$0	\$0
30		\$0	\$0
1		\$0	\$0
4		\$0	\$0
- An electronic file named, "newsletter jan.feb20XX" Society newsletters for January/February 20XX
- An electronic format of purchase order, file name "p\_2-18-20XX", (Order #21, dated February 18, 20XX) to

Ordered	Description	Price	Total
20	Animal Liberation Leaflet	\$0	\$0
20	Save 100 Animals Leaflet	\$0	\$0
10	Vegetarian/Vegan Starter Kit	\$0	\$0
20	Feral Cats Brochure	\$0	\$0
15	Christian Vegetarian Booklet	\$0	\$0
- An e-mail of shipping notice, file name "Scan 200 Vegetarian Cook book", (Tracking #00 & 00 Ground, dated June 20, 20XX) from email address to Individual-2 at email address with a the following message:  
The total was \$0. Thank you for everything. It has been nice to hear from you after such a long time. I hope all continues to go well in service. I hope to see you at Festival!
- An e-mail from Individual-3 to Individual-2 as to an order of books in value of \$0 with tracking number
- An electronic format of resume, file name "Resume", from an individual who experienced in sales, assisting customers with purchases, stocked inventory, and providing customer service
- The file named "Scan Donations Part 2" contains three e-mails from and one employment offers by ORG as to employments of International Students

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- The file named "Scan Donations Part 2" contains scanned proof of donations and publications purchased made by ORG in 20XX and 20XX.
- The file named "Scan office 20XX" contains receipts of supplies purchased at
- Nine electronic files with name start with "scan bank statements..." contains monthly bank statements of nine months in 20XX
- The file named "Scan book and flyers purchases to distribute freely to public" contains copies of flyer about Yoga, receipts of order, and a cancelled check in amount of \$0 issued in 20XX  
The file named "Scan Donations ORG 20XX" contains soliciting letters for donation or memberships from other organizations and a check in amount of \$0 issued to
- The file named "Scan girls work travel 20XX" contains e-mails and job offers in 20XX and 20XX between ORG and Employment Agents for international students or foreigners:
  - A Work & Travel Job Offer prepared by ORG on January 22, 20XX provided the following job information:  
Job Start Date: June 25, 20XX  
Job End Date: September 16, 20XX  
Job Title: Sales Rep  
Job Description: Kiosk Sales  
Expected hours per Week: 40  
Wages: \$ Commission Sales
  - Individual-4 from email address on April 12, 20XX requested ORG to confirm a list of 12 International Students for t-shirts sales provided by :

ID	Participant Name	Country	Title	Pay Rate	Start Date	Sponsor
000000	Student-1	Country	Sales Rep.	Commission Sales	15-Jun	Sponsor
000000	Student-2	Country	Sales Rep.	Commission Sales	12-Jun	Sponsor
000000	Student-3	Country	Sales Rep.	Kiosk Sales	20-Jun	Sponsor
000000	Student-4	Country	Sales Rep.	\$0	1-Jul	Sponsor
000000	Student-5	Country	Sales Rep.	\$0	15-Jun	Sponsor
000000	Student-6	Country	Sales Rep.	\$0	15-Jun	Sponsor
000000	Student-7	Country	Sales Rep.	Commission Sales	25-Jun	Sponsor
000000	Student-8	Country	Sales Rep.	Commission Sales	10-Jun	Sponsor
000000	Student-9	Country	Sales Rep.	Commission Sales	27-Jun	Sponsor
000000	Student-10	Country	Sales Rep.	Commission Sales	28-Jun	Sponsor
000000	Student-11	Country	Sales Rep.	Commission Sales	XX-Jun	Sponsor
000000	Student-12	Country	Sales Rep.	Commission Sales	XX-Jun	Sponsor

- A Work & Travel Job Offer prepared by on February 22, 20XX provided the following job information:  
Job Title: Sales Person  
Job Description: Selling City Tee Shirts

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Expected hours per Week: 20

Minimum Hours per Week: 15

Wages: \$ 0

- Individual-4 from email address on June 4, 20XX provided ORG a list of 15 International Students for t-shirts sales:

Name	Surname	M/F	Staff	English Level	Start Date	Sponsor
	Student-13	F	Individual-5	Intermediate	3-Jun	Sponsor
	Student-14	F	Individual-6	Upper Intermediate	15-Jul	Sponsor
	Student-15	F	Individual-5	Intermediate	10-Jun	Sponsor
	Student-16	F	Individual-7	Upper Intermediate	25-May	Sponsor
	Student-17	F	Individual-7	Upper Intermediate	25-May	Sponsor
	Student-18	F	Individual-5	Upper Intermediate	20-Jun	Sponsor
	Student-19	F	Individual-8	Intermediate	15-Jun	Sponsor
	Student-20	F	Individual-8	Intermediate	30-Jun	Sponsor
	Student-21	F	Individual-6	Advance	1-Jul	Sponsor
	Student-22	F	Individual-9	Intermediate	15-Jun	Sponsor
	Student-23	F	Individual-9	Pre-Intermediate	15-Jun	Sponsor
	Student-24	F	Individual-9	Pre-Intermediate	15-Jun	Sponsor
	Student-25	F	Individual-9	Upper Intermediate	15-Jun	Sponsor
	Student-26	F	Individual-9	Intermediate	15-Jun	Sponsor

- The file named "20XX" contains an e-mail on October 12, 20XX to confirm a membership order for Secretary/ORG in amount of \$0 from
- The file named "Scan Purchase of Display Wagon" contains a letter dated January 31, 20XX from to confirm purchase of a display wagon
- The file named "Scan Stock Inventory 20XX" contains invoices issued in 20XX from t-shirts manufacturers/vendors:

Vendor	Invoice / Order #	Ship date	Description	Quantity	Unit Cost	Subtotal	Shipping / Service	Total
Vendor	00000	1/31/20XX	Sublimation Tops	0	0	0	0	0
			TD Adult S/S S-XL T-Shirt	0	0	0		0
			TD Youth S/S T-Shirt	0	0	0		0
Vendor	00000	3/24/20XX	TD Adult S/S S-XL T-Shirt	0	0	0	0	0
			TD Youth S/S T-Shirt	0	0	0		0
Vendor	00000	6/14/20XX	TD Adult S/S S-XL T-Shirt	0	0	0	0	0
			Sublimation Tops	0	0	0		0
Vendor	00000	7/XX/20XX	Ladies Pasisley V NK	0	0	0	0	0
			Ladies Pasisley V NK 2XL	0	0	0		
			Men Basic T-Shirt	0	0	0		
			Men Basic T-Shirt 2XL	0	0	0		
			Youth T-Shirt	0	0	0		
CO-1	00000	8/4/20XX	TD Adult S/S S-XL T-Shirt	0	0	0	0	0
			TD Youth S/S T-Shirt	0	0	0		0

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CO-2	00000	8/10/20XX						0
CO-2	00000	8/11/20XX	Sarong-KD-TDYE	0	0	0		0
CO-3	00000	8/12/20XX	Ladies Pasisley V NK	0	0	0	0	0
			Ladies Pasisley V NK 2XL	0	0	0		
CO-2	00000	9/30/20XX	Sarong-KD-TDYE	0	0	0		0
CO-4	00000	10/21/20XX	Girls Royal FQ SS Crew T's 72 pce prepack	0	0	0		0
			Ladies Royal FQ SS Crew T's 36 pce prepack	0	0	0		
CO-5	00000	12/12/20XX	Infant pant, creeper, and other	0	0	0		0
CO-2	00000	11/7/20XX	Kd-Sin, Tie Dye Sarong...	0	0	0		0
CO-5	0000000	12/9/20XX	Infant T-Romper	0	0	0		0
			Celtic Knot Scarf	0	0	0		
			Infant pant, creeper,...	0	0	0		
			Infant T-Romper	0	0	0		
			Infant Softy Snap Shoulder	0	0	0		
			Infant Mitten Cuff Lap T	0	0	0		
			Toddler Girls Ruffle Tunic	0	0	0		
			Girls Vintage Longer Length T	0	0	0		0

- The file named "Scan Supplies 20XX" contains receipts of storage boxes and other supplies purchased from t, and other retailers in 20XX and 20XX
- The file named "Scan t-shirts designs 20XX" contains photos of ORG's t-shirts for sales
- The file named "Scan vehicle repairs 20XX" contains receipts for parking and purchased items for vehicles, invoices of towing services, auto repair orders, and license registration renewal.
- The file named "SCAN-ORG NON-PROFIT AGREEMENT" contains blank Volunteer Agreement, Non-Competition Agreement, and Confidentiality Agreement
- The file named "ScreenPrinting\_20XX" contains invoices issued in November and December 20XX from :

Ordered	Description	Price	Total
0	Front-9 Swipe Print 8 Color 1 Discharge	\$0	\$0
	Base plus sweatshirts and shirt prep		
	New design and films, youth size		
Ordered	Description	Price	Total
0	Map Tee Front and Back hit	\$0	\$0
0	Mission Map Tee Front and Back hit	\$0	\$0
0	SD Poster Tee Front and Back hit	\$0	\$0
0	Tee banks added	\$0	\$0

9/10/XX IDR5 was issued to ORG, copy to Attorney, for documents not provided in the package received on August 30, 20XX including the monthly bank statement of March, April, and

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July 20XX, the credit card statements (Account# ) used for purchasing, cancelled checks, and sales and inventory records of t-shirts.

9/24//XX Examiner called ORG Secretary and Attorney and left voice message to them for question they have on IDR5.

10/1/XX – Government shutdown was ordered due to a continued lapse in appropriations.  
10/16/XX

10/17/XX Examiner did not receive mail from ORG or Attorney. Secretary of ORG stated that she mailed a package to examiner. Examiner checked with mails room for the package.

10/23/XX Examiner informed Secretary of ORG the package not found. She stated copies could be regenerated next day and send to examiner again.

10/29/XX Received a package with response to IDR5 from ORG. The package contained the following items:

- A cover letter dated on October 27, 20XX written by Secretary to IRS
- Hand writing response to Item 1a through 1f, 2a, 5, 7 and 8 on IDR5
- Cancelled checks of check # 16, 18, 141, 142, 144, 148, 149, 151, 152, 153, 155, 158, 159, 164, 165, 166, 168, 170, 171, 172, 173, 174, 177, 178, 179, 181, 182, 112, 122, 124, 125, 126, 128, 129, 121, 122, 124, 125, 126, 127, 129, 122, 123, 125, 126, 127, and 120
- A double-sided pamphlet about ORG, "Are you eating GMOs?"
- An USB Flash Drives contains the following electronic files:
  - Eleven electronic files with name start with "10-1-20XX" contains monthly credit card statements from February through December 20XX
  - Monthly bank statements of March, April, and July 20XX for ORG's checking account
  - A Word document (Electronic File Name: 20XX Annual Report ORG cover page) cover page for Annual Report 20XX
  - A Word document (Electronic File Name: Annual Report 20XX.docx), written by , in title of *Annual Report 20XX*
  - A Word document (Electronic File Name: Flyer for Distribution), published in *20XX Green Issue*
  - The file named "Certificate for ORG workers comp 20XX" contains Certificate of Liability Insurance from April 1, 20XX to April 1, 20XX
  - A Word document (Electronic File Name: Flyer Info – SEED POLICE), a article title "Article" published in *April 20XX Issue*
  - The file named "New Artwork Beaches Design" contains an image of ORG's t-shirt
  - The file named "One Planet Poster Art for Display" contains an image of ORG' poster

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- A Word document and a to an article titled "Article" published in May 20XX Issue
- The file named "City poster shirt 2" contains an image of ORG's t-shirt
- The file named "Scan\_Doc0001" and "scan doc 2" contains a rental agreement between ORG and Secretary for garage-parking-storage at Address, City, State in 20XX
  - Office Storage, Garage and Parking 3 spaces
  - Monthly Rental: \$ 0
  - Deposit: \$0
  - Start Date: 01/01/20XX
- The file named "SCAN-ORG NON-PROFIT AGREEMENT" contains blank Volunteer Agreement, Non-Competition Agreement, and Confidentiality Agreement
- A Word document (Electronic File Name: VOLUNTEER I.D 2) contains a volunteer badge for Secretary

The deposits, withdrawals, and checks paid on bank statements of 20XX are in the table below:

20XX	Deposits	Withdrawals & Debit	Checks	Balance
Beginning Balance				0
January	0	0	0	0
February	0	0	0	0
March	0	0	0	0
April	0	0	0	0
May	0	0	0	0
June	0	0	0	0
July	0	0	0	0
August	0	0	0	0
September	0	0	0	0
October	0	0	0	0
November	0	0	0	0
December	0	0	0	0
Totals	0	0	0	

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Ending Balance						0	

The distribution of expenses of each month in 20XX is in the table below:

20XX01 / 20XX12	Permit & sales tax	Business insurance, bank, credit card service fees	Cost of goods sold	Gas, auto insurance, repair, maintenance & tickets	Display products, supplies, boxes & other expenses	Grocery, clothing, & airfare	Donations or publications purchased
January	0	0	0	0	0		
February	0	0	0	0	0		0
March	0	0	0	0	0	0	
April	0	0	0	0	0		
May	0	0	0	0	0	0	0
June	0	0		0	0	0	0
July	0	0	0	0	0	0	0
August	0	0	0	0	0	0	
September	0	0	0	0	0	0	0
October	0	0	0	0	0	0	0
November	0	0	0	0	0	0	
December	0	0	0	0	0		0
Totals	0	0	0	0	0	0	0
Percentage	0%	0%	0%	0%	0%	0%	0%

Note: The above expenses (\$0 in total) were the sum of receipts of expenses (gas & office supplies) paid by cash, checks issued, ATM & debit card withdrawals, electronic withdrawals, fees and other withdrawals from January 1 through December 30, and credit card charges from January 29 through December 03 (credit card charges occurred in January and December 20XX were not provided). Payments made for rental expenses or compensating international students not indicated or included in the documents provided.

11/4/XX IDR6 was issued to ORG, copy to Attorney, for documents not provided in the package received on October 29, 20XX. Items on IDR6 include cancelled check (check# 132, 162, 157, 120, and 129), the beginning balance and ending balance of inventory (t-shirts) for 20XX, the unit selling price of t-shirts, the amount of compensation and/or commission paid to international students in 20XX and 20XX, the receipt and purpose of 0 purchases on credit card statements, the purchase and usage of ORG's vehicles, and information not specified in the previous documents provided.

11/XX/XX Examiner called ORG Secretary and Attorney and left voice message to them for question they have on IDR6.

Attempts to clarify information and for a conference call had been made on 11/15/XX, 11/18/XX, and 11/19/XX, however, examiner has not received affirmation from ORG, Secretary or Attorney. Examiner informed Secretary and Attorney by phone on 11/21/XX that the result of examination would be determined based on documents and information available.

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To date, the examiner has not received the response from ORG or its Representative as to the items requested on IDR6 or conference as to the remaining item for examination.

## LAW

*IRC section 501(c)(3)* provides, in part, for the exemption from federal income tax of corporations organized and operated exclusively for charitable, scientific, or educational purposes, provided no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

*IRC section 502(a)* provides that an organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt from taxation under section 501 on the ground that all of its profits are payable to one or more organizations exempt from taxation under section 501.

*Treas. Reg section 1.501(c)(3) -1(c)(2)* states that an organization is not operated exclusively for charitable purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

*Treas. Reg section 1.501(a)-1(c)* defines "private shareholder or individual" as referring to persons having a personal and private interest in the activities of the organization.

*Treas. Reg section 1.501(c)(3) -1(d)(1)(ii)* states that an organization is not organized exclusively for any of the purposes specified in *IRC section 501(c)(3)* unless it serves public, rather than private interests. Thus, an organization applying for tax exemption under *IRC section 501(c)(3)* must establish that it is not organized or operated for the benefit of private interests.

*Treas. Reg section 1.501(c)(3)-1(d)(3)(i)* defines "educational" as " In general... (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

In *Better Business Bureau of Washington, D.C. v. U.S.*, 326 U.S. 279, 283 (1945), the Supreme Court held that the "presence of a single . . . [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes."

In *Airlie Foundation, Inc. v. U.S.*, 826 F. Supp. 537 (D. D.C. 1993), aff.d 55 F.3d 684 (D.C. Cir. 1995) the court acknowledged that Airlie's activities have some noncommercial characteristics, but found these outweighed by other factors such as the nature of Airlie's clients and competition, its advertising expenditures, and substantial revenues derived from weddings and special events. In the court's view, these factors support an adverse conclusion. Finally, citing a distinctive commercial hue to the way it carries out its business, the court concluded that Airlie does not qualify under *IRC 501(c)(3)* because it operates its conference center in a manner consistent with that of a commercial business.



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*IRC section 6001* provides that every person liable for any tax imposed by the IRC, or for the collection thereof, shall keep adequate records as the Secretary of the Treasury or his delegate may from time to time prescribe.

*IRC section 6033(a)(1)* provides, except as provided in *IRC section 6033(a)(2)*, every organization exempt from tax under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts and disbursements, and such other information for the purposes of carrying out the internal revenue laws. The Secretary may also prescribe by forms or regulations the requirement of every organization to keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

*Treas. Reg. section 1.6001-1(c)* states that in addition to such permanent books and records as are required by paragraph(a) of this section with respect to the tax imposed by section 511 on unrelated business income of certain exempt organizations, every organization exempt from tax under section 501(a) shall keep such permanent books of account or records, including inventories, as are sufficient to show specifically the items of gross income, receipts and disbursements. Such organizations shall also keep such books and records as are required to substantiate the information required by section 6033. See section 6033 and sections 1.6033-1 through -3.

*Treas. Reg. section 1.6001-1(e)* states that the books or records required by this section shall be kept at all times available for inspection by authorized Internal Revenue Service officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any Internal Revenue law.

*Treas. Reg. section 1.6033-1(h)(2)* provides that every organization that has established its right to exemption from tax, whether or not it is required to file an annual return of information, shall submit such additional information as may be required by the District Director for the purpose of enabling him to inquire further into its exempt status and to administer the provisions of subchapter F (section 501 and the following), chapter 1 of the Code and *IRC section 6033*.

In accordance with the above cited provisions of the Code and Regulations under *IRC sections 6001 and 6033*, organizations recognized as exempt from federal income tax must meet certain reporting requirements. These requirements relate to the filing of a complete and accurate annual information (and other required federal tax forms) and the retention of records sufficient to determine whether such entity is operated for the purposes for which it was granted tax-exempt status.

### GOVERNMENT'S POSITION

We are proposing revocation based on ORG's failure to operate exclusively for charitable purposes and a part of its net earnings inures to the benefit of individual prohibited by law, as discussed below.

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Bank statements reveal that the receipts of ORG are from sales of t-shirts. Disbursements are for administrative, vehicles, inventory storage, the cost of goods sold, and other office expenses. ORG does not budget or disburse its available funds for beach cleaning activities or educational materials. Expenditures focus on, if not all, selling t-shirts.

The environmental messages printed on t-shirts for sales are to protect oceans, to save the sea creatures, or messages alike. The profits from sales are to order more t-shirts for sales – with different patterns, but the similar messages printed. No records, information, or studies are provided how these messages printed t-shirt are educational or charitable to the public, except a small portion of receipts are used for environmental DVD rentals, donations to other organizations, or purchase of publications from other organizations.

ORG provides a couple of pamphlets and some publications created by other organizations, which is claimed to be educational and free to public. However, no records or information illustrates when and how, the number of pamphlets printed and distributed to the public.

*Treas. Reg. section 1.501(c)(3)-1(d)(1)(ii)* provides that an organization is not organized or operated for exempt purposes unless it serves a public rather than a private interest. The term "educational" is used in IRC section 501(c)(3) in its general legal sense in the law of charities and does not have a separate and distinct meaning from the term "charitable." In construing the meaning of the phrase "exclusively for educational purposes" in Better Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court of the United States said, "This plainly means that the presence of a single noneducational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes."

ORG does not maintain a web site where it can advocate, educate, or exchange environmental beliefs or ideas with the public, which may be more efficiently, effectively and environmental friendly. Instead ORG's substantial activity was to set up booths in public places and to sell t-shirts, which is not different from other t-shirts retailers. ORG's purposes, as evidenced by its revenues, expenses and incentives provided to its sales staff, are commercial in nature. This situation is similar to the case in Airlie Foundation, Inc. v. U.S. In that case, tax-exempt status is revoked because the organization operates its conference center in a manner consistent with that of a commercial business. ORG operates in a similar manner to other for-profit retailers and should likewise have their exempt status revoked.

Another primary focus of the issue is on the question whether any of ORG's net earnings inured to the benefit of private individuals.

The term 'net earnings' as used in section *IRC section 501(c)(3)* includes more than the net profits as reflected on the organization's books. Net earnings may inure to the benefit of an individual in a variety of ways, and not merely through the distribution of dividends.



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ORG does not correctly report its revenue and expenses on Form 990. The figures reported on Form 990 for 20XX are estimates. ORG does not rely on records for reporting purpose. The total bank deposits in 20XX are \$0 more than the gross revenue reported on Form 990 for 20XX.

ORG did not have a system or procedure to keep its sales, inventory, cash receipts and disbursements accountable. Secretary, Secretary of ORG, is the only individual who has the access to ORG's bank account, signs checks, purchases using ORG's credit card and debit card, makes deposits or withdrawals, and carries a substantial amount of cash (\$0) for ORG's operation. Secretary has already admitted some debit card charges are for her personal expenses. A substantial amount of expenses, such as gas, clothing, books, and unexplained withdrawals, are not distinguishable whether they were for ORG operations or Secretary's personal use. Without reliable records, we cannot verify that these expenditures are exclusively for ORG's exempt purpose. Our position is that a portion of ORG's net earnings inured to the benefit of Secretary and ORG has thereby violates the requirements for tax exemption under *IRC section 501(c)(3)*.

### TAXPAYER'S POSITION

The taxpayer's position is unknown at this time.

### CONCLUSION

As a result of the examination, we have determined that ORG is not operating for exempt purposes as a *IRC section 501(c)(3)* organization. ORG fails the operational test prescribed in *Treas. Reg. 1.501(c)(3)-1*. Since ORG is not organized and operated exclusively for one or more exempt purposes under *IRC section 501(c)(3)*, its Federal tax exempt status under such section is revoked effective on January 1, 20XX. ORG is required to file Form 1120, *U.S. Corporation Income Tax Return*, for the tax year ending December 31, 20XX and all years there after.